

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: CACE18-016496

KM1 and KM2, minor children and  
their adoptive parents and guardians,  
TM and MM,

Plaintiffs,

v.

CHILDNET, INC. and NATIONAL  
YOUTH ADVOCATE PROGRAMS,  
INC.

Defendants.

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**PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT**

COME NOW the minor Plaintiffs, KM1 and KM2 and their adoptive parents and guardians, by and through undersigned counsel, and pursuant to Florida Rules of Civil Procedure 1.190 and 1.250(c), seeks an entry of an order granting leave of Court to file an Amended Complaint and in support thereof, states as follows:

1. Plaintiffs' initial Complaint in this matter was filed on July 10, 2018.
2. In said Complaint, the named Defendants were ChildNet, Inc. (hereinafter "ChildNet") and National Youth Advocate Programs, Inc. (hereinafter "NYAP").
3. Both Defendants have filed Answers to the Complaint, specifically ChildNet filed its Answer on September 13, 2018 and NYAP filed its Answer and Affirmative Defenses on August 23, 2018.

4. In ChildNet's Affirmative Defense Number 9 on page 10 of its Answer and Affirmative Defenses, it specifically states that "As its ninth defense, this Defendant, pursuant to *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993), and Fla. Stat. Ch. 768, ***specifically identifies the following as Fabre Defendant, to wit—KIDS IN DISTRESS, INC. for all the allegations of negligence, culpable negligence, as well as acts, errors and/or omissions Plaintiffs claim against CHILNET in the Complaint.***" Based upon the allegation and documentation provided by ChildNet, Plaintiff is seeking leave of Court to amend the complaint.

5. As a result, Plaintiffs allege in good faith that Kids in Distress is also liable for the incidents and damages complained of by Plaintiffs in their initial Complaint, so Plaintiffs seek leave to amend their complaint so that Kids in Distress can be added as a defendant to their claim.

6. A copy of Plaintiffs proposed Amended Complaint is attached hereto as Exhibit "A."

7. Florida law is well-settled that leave to amend shall be freely granted, and "leave of court shall be freely given when justice so requires." Fla. R. Civ. P. 1.190(a). It is within this Court's discretion to grant leave to amend so long as it finds that defendants would not be prejudiced and that the privilege to amend has not been abused. *See Barnes v. Horan*, 841 So. 2d 472 (Fla. 3d DCA 2002); *Cousins Restaurant Associates v. TGI Friday's, Inc.*, 843 So. 2d 980, 982 (Fla. 4th DCA 2003) ("Leave to amend should not be denied unless the privilege has been abused, there is prejudice to the opposing party, or amendment would be futile").

8. No Defendant will be prejudiced by permitting Plaintiffs to file an Amended Answer. As this action is in the very early stage of discovery. Discovery is still ongoing, and depositions have yet to be taken.

9. No Defendant currently named, or to be named in this matter, would be prejudiced by the filing of Plaintiffs' Amended Complaint.

10. Counsel for Plaintiffs have inquired Defendants' position on this motion on short notice. Neither defense counsel have been able to respond. Plaintiff will communicate with them in good faith before setting any hearing.

WHEREFORE, Plaintiffs respectfully request this Court to grant them leave to file their Amended Complaint to correctly name as Defendants all parties responsible in this matter and for such other relief as this Court deems appropriate.

#### **CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that on this 31st day of January 2019, a true and correct copy of the above and foregoing was served via the E-Portal on:

<b>MARLOW ADLER ABRAMS NEWMAN &amp; LEWIS</b> 4000 Ponce de Leon Blvd., Suite 570 Coral Gables, FL 33146 Telephone: (305) 446-0500 Facsimile: (305) 446-3667 MARITZA PENA, Esquire Florida Bar No.: 145637 RENEE GOMEZ, Esquire Florida Bar No.: 35544 <a href="mailto:mpena@marlowadler.com">mpena@marlowadler.com</a> <i>Counsel for ChildNet, Inc.</i>	<b>WICKER SMITH O'HARA MCCOY &amp; FORD, P.A.</b> 515 E. Las Olas Boulevard Telephone: (954) 847-4800 Facsimile: (954) 760-9353 JASON A. GLUSMAN, Esquire Florida Bar No.: 0419400 CARLOS A. GARCIA, Esquire Florida Bar No.: 99768 <a href="mailto:flcrtpleadings@wickersmith.com">flcrtpleadings@wickersmith.com</a> <i>Counsel for National Youth Advocate Program, Inc.</i>
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#### **TALENFELD LAW**

*Counsel for Plaintiffs*

1776 N. Pine Island Road, Ste. 222

Fort Lauderdale, Florida 33322

Telephone: (754)888-KIDS

Facsimile: (954)644-4848

By: /s/ Howard M. Talenfeld

**Howard M. Talenfeld, Esq.**

Florida Bar No.: 312398

**Maha A. ELKolalli, Esq.**

**Florida Bar No.: 83815**

[Howard@justiceforkids.us](mailto:Howard@justiceforkids.us)

[Maha@justiceforkids.us](mailto:Maha@justiceforkids.us)

[Brianna@justiceforkids.us](mailto:Brianna@justiceforkids.us)

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CHILDNET, INC., NATIONAL  
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INC. and KIDS IN DISTRESS, INC.

Defendants.

\_\_\_\_\_/

### **FIRST AMENDED COMPLAINT**

The Plaintiffs, KM1 and KM2, minor children, and their adoptive parents, TM and MM, by and through the undersigned attorneys, sue the Defendants, CHILDNET, INC. (hereinafter “CHILDNET”), NATIONAL YOUTH ADVOCATE PROGRAM, INC. (hereinafter “NYAP”), and KIDS IN DISTRESS, INC. (hereinafter “KIDS”) and as grounds therefore state:

### **JURISDICTION AND VENUE**

1. This action is for damages in excess of fifteen thousand dollars (\$15,000.00) excluding interest, costs, and attorney’s fees, and therefore is within the jurisdiction of the Court.
2. Venue is proper within this Circuit because a substantial part of the events giving rise to the claims occurred in Broward County, Florida and the Defendant, CHILDNET, resides in said county.



3. Plaintiffs have complied with any and all conditions precedent necessary for the maintenance of this lawsuit.

### **PARTIES**

4. Plaintiff, KM1, was born in 2012 and was first taken into the custody of the State of Florida, in Broward County, when he was only six months old, and after being reunified with his biological mother for a short period of time, he was brought back into the custody of the State of Florida again in 2015, when he was two years old and resided in Broward County.

5. Plaintiff, KM2, was also born in 2012 and she was adopted by TM and MM shortly after her birth through a private adoption agency.

6. Plaintiffs, TM and MM, are sui juris adults and, as all times material hereto, were residents of Broward County Florida.

7. TM and MM adopted KM1 on April 28, 2017.

8. The Plaintiffs are identified by pseudonym in this Complaint to protect the privacy rights of the minor Plaintiffs, KM1 and KM2, for the following reasons: KM1 was abused, abandoned, and/or neglected prior to adoption by TM and MM and many of the underlying facts of this matter are confidential and protected by Chapter 39 and Chapter 63, Florida Statutes; the allegations made by Plaintiffs involve sexual abuse suffered by KM1 and KM2; and KM1 and KM2 share the same last name as their adoptive parents, TM and MM.

9. Defendant, CHILDNET, is a not-for-profit corporation organized and existing under the laws of the State of Florida and operating its business in Broward County, Florida.

10. At all times material hereto, Defendant, CHILDNET, was and is the Community Based Care Lead Agency, in Broward County, Florida, which is located in the Southeast Region of the Florida Department of Children and Families (hereinafter "DCF"), pursuant to section

409.993, Florida Statutes, and contracted with DCF to administer foster care and related services in Broward County, Florida, including case management services and licensing of foster homes, in accordance with Chapter 409 and Chapter 39, Florida Statutes, Florida Administrative Code provisions, CHILDNET's contract with DCF, DCF Operating Procedures, and applicable law.

11. Defendant, NYAP, is a foreign not-for-profit corporation organized and existing under the laws of the State of Ohio and authorized to do business in Florida with offices and operations in Broward County, Florida.

12. At all times material hereto, NYAP performed foster care and related services, pursuant to a subcontract with CHILDNET in Broward County, Florida, including providing therapeutic services to dependent children and licensing foster homes, in accordance with Chapter 409 and Chapter 39, Florida Statutes, Florida Administrative Code provisions, NYAP's contract with CHILDNET, DCF Operating Procedures, and applicable law.

13. Defendant, KIDS, is a Florida not for profit corporation organized and existing under the laws of the State of Florida and operating its business in Broward County, Florida.

14. At all times material hereto, NYAP provided therapeutic services to KM1 while he was in a NYAP foster home and provided Adoption Related Services to KM1, KM2, TM, and MM to ensure that the adoption process included and addressed all therapeutic needs.

### **GENERAL ALLEGATIONS**

15. On April 8, 2015, KM1 became a dependent child when his teenage, biological mother could no longer provide him with adequate care and he was placed in traditional foster care.

16. KM1 had never been a victim of physical, sexual, or emotional abuse while living with his biological mother.



17. On April 10, 2015, CHILDNET began providing dependency case management services to KM1, which included assigning his case to a Child Advocate, who was a case manager responsible for placing him in safe and appropriate foster homes, visiting him at his foster home at least once every 30 days, being aware of the facts documented in his case file, making sure that he was in a safe placement, attending court hearings on his behalf and informing the court of how KM1 was doing in foster care and how his needs were being met, and referring him for appropriate and necessary services to address his needs. The CHILDNET Child Advocate's work on KM1's case was monitored by a Child Advocate Supervisor.

18. On May 7, 2015, a Comprehensive Behavioral Health Assessment (CBHA) was completed on KM1, which showed that KM1 did not have any issues related to sexual abuse when he came into State care and also stated that his mental status should continue to be monitored as he was unable to be assessed at the young age of two years old.

19. On August 4, 2015, CHILDNET became aware that it had been recommended by a therapist that KM1 be placed in a therapeutic foster home due to his frequent temper tantrums and uncontrollable behavior. Therapeutic foster care is for children who have suffered extreme trauma and who have severe emotional and behavioral needs for which a traditional foster home is not equipped to manage, and, in contrast, therapeutic foster parents are given specialized training to be able to help address the needs of such children.

20. On August 28, 2015, KM1 was referred to KIDS for Clinical Services/Family Counseling.

21. On September 7, 2015, instead of placing KM1 in a therapeutic foster home, CHILDNET placed him in a traditional foster home, with an inexperienced foster parent who had only been licensed as a foster parent since March 7, 2014 and who only had experience with one



foster child prior to KM1 being placed with her (hereinafter referred to as the “Williams foster home”).

22. On September 18, 2015, KIDS conducted an intake assessment of KM1 which stated that KM1 was exhibiting inappropriate bathroom habits, was having behavioral issues at school, was defecating in a corner of the house instead of going to the bathroom, was urinating on the floor, was hiding dirty diapers, and was exhibiting aggressive disruptive behaviors.

23. KIDS was further advised at this intake assessment that foster parent’s biological son in the Williams foster home was now reducing contact with KM1 despite previously interacting regularly with KM1.

24. Only a few weeks after KM1 was placed in the Williams foster home, KM1 began exhibiting new, inappropriate behaviors that were indicative of sexual abuse, such as:

- a. Exposing his penis in public;
- b. Playing with his penis;
- c. Taking off his clothes in public and throwing a tantrum when redirected to put his clothes back on;
- d. Defecating on himself and hiding feces around the foster home;
- e. Smearing feces on his face;
- f. Urinating on himself, the foster home, and schoolmates;
- g. Hitting his head when angry;
- h. Lying;
- i. Rubbing his hands on his buttocks;
- j. Putting his finger up his butt;
- k. Not wanting to bathe;

- l. Hitting, kicking, and spitting on other children and the foster mother; and
- m. Using curse words.

25. Despite these concerning behaviors, KIDS failed to determine KM1's therapeutic needs, failed to further inquire as to why the other child in the foster home was now avoiding KM1, and failed refer KM1 for a psychosexual assessment to determine whether or not KM1's behaviors of inserting his finger in his butt, urinating everywhere, and the smearing of feces on his face was a potential indicator that he was sexually victimized.

26. Such behaviors occurred frequently and consistently during the time period of September 15, 2015 until June 23, 2016, when KM1 left the Williams foster home, and KM1's foster mother made KM1's CHILDNET Child Advocate aware of the behaviors of KM1 as they occurred during that time period. However, CHILDNET did not have KM1 assessed for sexual abuse and did not have a psychosexual assessment performed to address these very serious sexualized behaviors.

27. On October 1, 2015, the goal of KM1's dependency case changed from "maintain and strengthen" to "adoption," which means that initially, the plan was to help KM1 maintain and strengthen his relationship with his biological mother so that he could return to her care, but since his biological mother had not complied with tasks she was required to do, it was determined that she could not adequately care for him and that CHILDNET would seek legal termination of her rights as a parent by the dependency court so that KM1 could be adopted into a new family.

28. On October 15, 2013, KM1's case was internally transferred by CHILDNET to a different case management unit to handle his adoption, with a new Child Advocate and Child Advocate Supervisor, neither of whom had any knowledge of KM1, his behaviors, or the circumstances which brought him into care, instead of KM1 remaining with his current Child

Advocate and Child Advocate Supervisor who were aware of his history and potential need for treatment and specialized care since he came into State care.

29. On October 28, 2015, KIDS conducted a Bio-psychosocial evaluation of KM1 where KIDS again failed to identify the behaviors which were indicative of sexual abuse and failed to refer KM1 for a psychosexual evaluation.

30. On November 2, 2015, NYAP also began providing therapeutic services to KM1, which included having a therapist visit KM1 once per week for therapy sessions, and KM1's foster mother made the therapist aware of the behaviors of KM1 that she had witnessed since he had been placed in her home.

31. On November 5, 2015, the KIDS therapist noted that KM1 was hiding soiled diapers, urinating on the floor both at home and at school, and exhibiting angry outbursts.

32. On November 18, 2015, the KIDS therapist continued to speak with the foster parent about reasons why KM1 may be urinating on the floor; however, KIDS again failed to identify the potential indicator of sexual abuse or recommend the need for a psychosexual evaluation. At this point, KM1's placement in the Williams home was at risk of breaking down as the foster parent expressed frustration and doubt in how much longer she could maintain KM1 in her home.

33. On November 30, 2015, the Williams Foster home reported that KM1 had ringworm in his head from rubbing his feces in his hair. The Defendants still did not request an assessment to determine why KM1 was exhibiting these behaviors.

34. On December 7, 2015, the Williams Foster home notes indicated that KM1 did not want to bathe.

35. In December 2015, due to KM1's behaviors and increased need for services and his foster mother's need for additional support, NYAP began meeting with KM1 two times per week for therapy sessions, instead of one time per week.

36. By January 2016, KIDS was informed that KM1's behavioral concerns were so extensive that the stability of his placement was at risk.

37. In February 2016, KM1's behaviors continued to escalate to the extent that on February 3, 2016, the KIDS therapist needed to redirect KM1 to maintain his personal space with the therapist. Notwithstanding knowledge of all of these behaviors, KIDS did not refer KM1 for the appropriate assessment.

38. On or about February 10, 2016, KIDS was advised that the foster mother's sixteen-year-old son would assist in putting KM1 to bed and would sometimes sleep in the room with KM1. KIDS was further advised that KM1's behaviors were escalating to the extent that he was no longer able to remain dry during the day nor at night. When the KIDS therapist inquired to KM1 about the foster parent's biological son, the foster parent became defensive. KIDS noted that KM1 was having difficulty maintaining physical boundaries and was unable to remain on task requiring constant redirection. KIDS failed to further inquire about the interactions between KM1 and the foster parent's biological son.

39. After the February 10, 2016 session, the KIDS therapist had difficulty scheduling sessions with the foster parent who now alleged that she had a hectic work schedule.

40. On March 1-2, 2016, despite the foster mother's request to terminate KIDS therapeutic services because there was a NYAP therapist still providing services, KIDS reported that KM1's therapeutic treatment through KIDS should continue as he had not yet met his therapeutic goals.

41. By March 9, 2016, the foster mother in the Williams home became so uncooperative with the KIDS therapist that the therapist was forced to explore potentially providing KM1 with therapy at his school.

42. By March 14, 2016, it became apparent to the KIDS therapist that KM1 would not be able to meet treatment goals with therapy being provided at school and the foster parent was still refusing to cooperate.

43. KIDS was aware that the foster parent was refusing to cooperate with the therapist in providing KM1 therapeutic services in the home immediately after the therapist began inquiring about the foster parent's biological son's involvement and interactions with KM1, including the biological son sleeping in the room with KM1 and why the foster parent's biological teenage son was placed on the authorized pick up list at KM1's school.

44. In March 2016, the concerns for KM1 should have become more obvious as his behaviors were escalating. KM1 suffered from extensive ringworm in his hair, back, and buttocks while in the Williams foster home which had been reported since November 2015.

45. KM1's behaviors included placing an entire roll of toilet tissue in the toilet, kicking, encopresis, urinating everywhere during the day and at night, jumping on furniture, and exhibiting boundary issues.

46. On March 9, 2016, CHILDNET completed a Home Study on TM and MM as they desired to become adoptive parents for a child in need.

47. TM and MM made CHILDNET aware that while they welcomed adding a child in need to their family, they had concern about adding any child who may pose a danger to their three-year-old daughter, KM2, and made it clear that they did not want to be put in a situation that placed KM2 at risk of being harmed.

48. On March 16, 2016, CHILDNET submitted a Judicial Review Social Study Report to the dependency court in preparation for a Judicial Review hearing on KM1's case. The purpose of both the report and the hearing was for CHILDNET, as the agency who had direct contact with KM1, to inform the court of any relevant facts or issues regarding KM1; however, CHILDNET failed to inform the court of all of the serious behavior issues it was aware that KM1 had been experiencing, which prohibited the dependency court from having complete information about KM1 to be able to make decisions that were in his best interest regarding his dependency case.

49. On March 21, 2016, KIDS discharged KM1 without meeting his treatment goals, without having recommended a psychosexual assessment, and without sufficiently raising its concerns to CHILDNET.

50. KIDS terminated therapeutic services at a time when adoptive homes were being explored for KM1 and when visits with the biological mother were still being explored, and KIDS failed to advise CHILDNET that both of these events would critically impact KM1's psychological and emotional stability.

51. On March 27, 2016, the Williams foster home reported that KM1 was putting his finger in his buttocks and that he had an odor. Despite noting this, KIDS, CHILDNET, and NYAP all failed to obtain an evaluation to determine the underlying cause of this extremely concerning behavior. The defendants ignore the alarming fact that the foster parent's biological son was permitted to bathe KM1 and was now refusing to bathe him anymore.

52. On June 16, 2016, as KM1's behaviors had not improved and continued to worsen, his foster mother in the Williams foster home submitted a 30-Day Notice of Removal to CHILDNET to have KM1 removed from her home.



53. On or about June 16, 2016, KM1's CHILDNET Child Advocate referred him to receive services from a behavior analyst to address his behaviors; however, CHILDNET failed to ensure that KM1 ever actually received these services.

54. On June 23, 2016, although KM1 had been having increased negative behaviors in the Williams foster home where he was the only foster child and it had been previously recommended that he be placed in a therapeutic foster home, and although he had been showing significant signs of sexual abuse, CHILDNET failed to have a psychosexual assessment performed and have him assessed for sexual victimization and placed him in another traditional foster home, licensed by NYAP. KM1's new foster home was licensed for a capacity of two foster children and there was only one bedroom for the two children to share and KM1 was placed without a safety plan to protect him and the other child from sexual behaviors (hereinafter referred to as the "Ebanks foster home").

55. KM1 continued to have behavioral problems while he was living in the Ebanks foster home, of which both CHILDNET and NYAP were aware and failed to address.

56. On July 28, 2016, although KM1 was still experiencing behavioral problems, NYAP reduced his therapy sessions to once every two weeks.

57. On or about August 10, 2016, another boy was placed to live with KM1 in the Ebanks foster home, which meant that he would be sharing a bedroom with KM1, and CHILDNET failed to implement a safety plan to protect KM1 and his foster brother from sexual behaviors. NYAP was aware that KM1 was sharing a bedroom with another foster boy and failed to recommend that a safety plan be implemented to protect KM1 and the other child from sexual behaviors.



58. Subsequent to the placement of KM1's foster brother, both children began misbehaving at school and daycare and KM1 continued to throw uncontrollable tantrums at home. NYAP therapy sessions focused on parenting techniques and redirecting KM1 rather than figuring out what was causing KM1 to act out.

59. On September 12, 2016, CHILDNET falsely represented to the dependency court in a Judicial Review Social Study Report that was filed with the court, that KM1 had been receiving in-home therapy weekly by NYAP, when in fact he was only having therapy sessions once every two weeks.

60. On September 28, 2016, KM1's biological mother's parental rights to him were terminated and KM1 was free to be adopted by another family.

61. On October 10, 2016, CHILDNET informed TM and MM that their home study had been presented as a possible adoptive home for KM1 and that they had been chosen as one of the top three potential families for KM1.

62. On October 17, 2016, TM, MM, and the other two potential adoptive families attended a meeting where CHILDNET and NYAP were present for the purpose of informing the families of KM1's history so that the families could make an appropriate decision as to whether they should adopt KM1.

63. Although during the meeting TM and MM made it clear that the safety of their daughter, KM2, was of utmost importance and that they did not want to adopt a child who had a history of being sexually abused or violent, CHILDNET and NYAP failed to disclose the inappropriate behaviors KM1 exhibited in his foster homes, that KM1's prior foster parent in the Williams foster home gave 30-Day Notice to have him removed from her home due to his behaviors, or that KM1's behaviors could possibly put TM and MM's daughter, KM2, at risk of

being harmed and becoming a victim of sexual abuse; therefore, TM and MM were deprived of having this information to consider in making their decision of whether to adopt KM1 into their family.

64. On November 4, 2016, a Match Staffing was held and attended by CHILDNET and NYAP, the purpose of which was to match prospective adoptive families with children who are available for adoption.

65. At the Match Staffing, CHILDNET and NYAP collectively determined that TM, MM, and KM2 were the best match out of the three families who were interested in adopting KM1, and based on the determination of Defendants, TM and MM pursued their adoption of KM1.

66. On November 5, 2016, TM, MM, and KM2 had their first visitation with KM1 at an adoption picnic and immediately fell in love with him and were eager to adopt him into their family.

67. On November 11, 2016, TM and MM were so excited about the prospect of adopting KM1, that they sent a social media message of their excitement to CHILDNET's Chief Executive Officer, Emilio Benitez, who they had previously met through mutual friends.

68. On November 11, 2016, Emilio Benitez, responded to the message by saying that he did not get involved in adoptions unless there are serious transgressions that need his attention, but if TM and MM experienced any issues in the process to let him know and he would direct them to the appropriate party to handle the issue.

69. On October 16, 2016, CHILDNET wrote a Child Study on KM1 that falsely stated that he "does not display any maladaptive behaviors" and failed to note any of the negative behaviors KM1 exhibited during his time in foster care including his sexualized behaviors or that

due to such behaviors his prior foster parent in the Williams foster home had asked for him to be removed from her home.

70. On December 27, 2016, the dependency court entered an order granting TM and MM unsupervised, overnight visitation with KM1.

71. On December 29, 2016, CHILDNET completed a Home Study on TM and MM, specific to the child, KM1, and recommended that TM and MM pursue adoption of KM1.

72. On or about January 5, 2017, KM1 was placed in TM and MM's home as a pre-adoptive placement.

73. After KM1 began living in TM and MM's home, TM and MM noticed sexualized behaviors of KM1 and TM and MM made CHILDNET and NYAP aware of these behaviors from the time KM1 was placed in their home until the time that TM and MM's adoption of KM1 was finalized. Such behaviors included:

- a. That KM1 talked about body parts and sexuality that seemed inappropriate for his age of only four years old;
- b. That KM1 would attempt to watch TM and MM change clothes, go to the bathroom, and shower, and that KM1 would throw a tantrum when redirected from these behaviors;
- c. That KM1 thought it was okay to grab TM and MM's crotch, laughed when he did, and seemed to think that was an appropriate action when redirected that it was inappropriate behavior by TM and MM;
- d. That KM1 was getting erections every time TM and MM undressed him to change his clothes or gave him a bath;

- e. That KM1 had been engaging in violent behavior toward TM and MM, including hitting, biting, and screaming; and
- f. That KM1 was afraid of the shower and terrified of getting his face and head wet, and that it took weeks for TM and MM to get KM1 comfortable with getting his face and head wet.

74. Anytime TM and MM raised concern about KM1's behaviors to Defendants, CHILDNET or NYAP, they were reassured that such sexualized behaviors were normal and there was nothing for them to be worried about instead of ensuring that KM1 had a psychosexual evaluation to determine whether KM1 had been a victim of sexual abuse and was sexually reactive.

75. Most significantly, during a home visit on January 12, 2017, TM and MM made CHILDNET and NYAP, aware that KM1 had told them that he and his four-year-old foster brother in the Ebanks foster home would touch each other's private parts in the bathtub and in their bedroom, and Defendants failed to ensure that KM1 had a psychosexual evaluation to determine whether KM1 had been a victim of sexual abuse and was sexually reactive and failed to contact the Florida Abuse Hotline to report this incident of child-on-child sexual activity so that it could be properly investigated.

76. On January 16, 2017, TM and MM sent an email to Emilio Benitez and advised him that, among other behavioral problems they had experience with KM1, there were concerns regarding KM1's behavior as KM1 spoke about inappropriate behavior with the other four-year-old boy in the Ebanks foster home.

77. Later, on January 16, 2017, Emilio Benitez responded to TM and MM's email stating that he was not concerned about KM1's behaviors.

78. TM and MM relied upon Emilio Benitez's statement that KM1's behaviors were not concerning and in reliance on such representation, TM and MM continued to pursue their adoption of KM1.

79. On January 20, 2017, TM and MM requested that KIDS provide adoption therapy to help them and KM1 and KM2 with the transition through the adoption process.

80. On January 24, 2017, a disclosure meeting was held and attended by CHILDNET and NYAP concerning the adoption of KM1 by TM and MM. During this meeting, TM and MM were provided with a copy of the Comprehensive Behavioral Health Assessment Report regarding assessment of KM1 from May 7, 2015 and the Child Study of KM1 that falsely stated that KM1 had no maladaptive behaviors, before CHILDNET required TM and MM to sign a Disclosure Checklist.

81. Although no information concerning KM1's serious behaviors exhibited in the Williams foster home was ever disclosed to TM and MM and although the concerns that had been raised by TM and MM had been mischaracterized by CHILDNET and NYAP as nothing more than normal childhood behavior, CHILDNET signed the Disclosure Checklist used during the disclosure meeting falsely stating that they had provided all known information about KM1 to the prospective adoptive parents, TM and MM.

82. Further, the Disclosure Checklist used by CHILDNET was designed in a manner that forced prospective adoptive parents to agree that all information had been disclosed to them although they were in no position to know whether that was, in fact, the case; in contrast, CHILDNET, as the adoption professionals, was the only party signing the Disclosure Checklist that has the ability to know if all information available to CHILDNET concerning the KM1 had been disclosed to TM and MM.

83. On or about January 25, 2017, the Plaintiffs were referred to KIDS for adoption therapy stating that the child, specifically KM1, and family, KM2, TM, and MM, need adoption therapy to help with the transition and bonding.

84. On January 26, 2017, KIDS assigned Jennifer Balandrano as the family's adoption therapist.

85. KIDS did not make contact with the plaintiffs until February 2, 2017 at which time TM and MM advised KIDS of KM1's sexual behaviors, reiterated the need for a safe home for KM2, and asked that the therapist address KM1's violent outbursts.

86. In the KIDS February 2, 2017 In-Depth Risk Assessment, the KIDS therapist reports that KM1 was exhibiting encopresis, but again failed to recognize that this was a potential sign of previous sexual victimization.

87. KIDS was further advised by TM and MM that KM1 was exhibiting concerning behaviors such as "peeking in the shower" when TM or MM were in the shower or when they were using the bathroom. The KIDS therapist noted that she reviewed the child's CBHA; however she failed to inquire, nor to review the previous therapy records for KM1, which were already in KIDS possession.

88. Despite these concerns, and despite KIDS having access to its previous therapy file for KM1 while he was in the Williams foster home, KIDS again failed to review KM1's history, make appropriate recommendations to the parents, TM and MM, and to CHILDNET, and to properly have KM1 evaluated to determine whether he had been sexually victimized.

89. On or about February 9, 2017, KIDS had its first therapy session with the Plaintiffs.

90. On March 2, 2017, KIDS completed its master treatment plan for KM1, and failed to establish appropriate treatment goals related to KM1's sexual reactivity.



91. On March 15, 2017, TM and MM were again told by KIDS that KM1's behavior, questions, and curiosity were appropriate for his age.

92. Prior to their adoption of KM1, anytime TM and MM raised concern or described KM1's negative behaviors to NYAP, they were reassured that such behavior was normal for a child his age and that KM1 was just testing boundaries with TM and MM and that they should not be worried.

93. Prior to their adoption of KM1, anytime TM and MM raised concern or described KM1's negative behaviors to CHILDNET, they were reassured that KM1's behavior was normal and nothing to be concerned about.

94. On April 28, 2017, in reliance on CHILDNET's assurances that their family was an appropriate match for KM1 and that KM1's behaviors were normal for a foster child his age, TM and MM adopted KM1.

95. By late April and/or early May, 2017, the KIDS therapist, notwithstanding additional knowledge of serious sexual behaviors failed to attempt to determine the underlying causes of KM1's concerning sexualized behaviors and continued to fail in having him properly evaluated.

96. KIDS further failed to recommend that a safety plan be put in place to protect KM2 from KM1's concerning behaviors.

97. On July 4, 2017, MM found KM1 and KM2 naked with KM1 on top of KM2, playing the "private parts game," and TM and MM immediately called DCF for assistance.

98. During the investigation of the July 4, 2017 incident, KM1 and KM2, who were both four years old at the time, both disclosed that KM1 had put his fingers and penis in KM2's vagina.



99. During the investigation of the July 4, 2017 incident, KM1 also admitted to touching KM2's anus and that his foster brother from the Ebanks foster home used to touch KM1 in the same manner.

100. As a result of the July 4, 2017, investigation, a safety plan was implemented for KM1's former foster brother and he was referred for a psychosexual evaluation. The safety plan specified that the child was to be supervised by the foster mother at all times, especially when he was around other children; that no other children would be placed in the foster home; that he would meet with a therapist to address good touch, bad touch, and sexualized behaviors; that he must never share a bedroom with any younger or more vulnerable children; that he may never share a bedroom with any child who is sexually aggressive, displays problematic sexual behavior, or has a history of sexual abuse; and that the foster mother would use a baby monitor system to keep watch on the child.

101. On August 28, 2017, KM1 disclosed additional sexual abuse that he experienced in the Williams foster home, stating that the foster mother's boyfriend touched his penis and put his fingers and a red toy in his butt. DCF was again called for assistance and to investigate and such investigation resulted in verified findings of sexual battery to KM1.

102. Since July 4, 2017, TM and MM have done everything in their power and financial means to ensure that both children received therapeutic services and they now use door alarms and a video monitoring system in their home to protect KM1 and KM2 from each other. TM and MM have also participated in family counseling with the children.

103. KM1, KM2, TM and MM all have resulting psychological conditions and suffer trauma from the events described herein and will require ongoing treatment to heal.

104. KM1 and KM2 have further suffered physical injuries as a result of the events described herein.

105. TM and MM have suffered expenses related to necessary treatment for KM1, KM2, and themselves and further, TM and MM's ability to earn income has been affected by the supervision necessary to keep KM1 and KM2 safe and because time has to be taken away from work to take KM1 and KM2 to necessary therapeutic treatment.

**COUNT I**  
**PLAINTIFF, KM1's NEGLIGENCE CLAIM AGAINST**  
**DEFENDANT, CHILDNET, INC.**

106. Plaintiff realleges paragraphs 1-105 as if fully set forth herein.

107. Defendant, CHILDNET, owed the following duties to Plaintiff, KM1, pursuant to Florida law and its contractual obligations pursuant to its contract with DCF:

- a. To ensure KM1's safety, well-being, and permanency;
- b. To protect KM1 from sexual abuse;
- c. To protect KM1 from physical abuse;
- d. To provide necessary therapeutic services to KM1;
- e. To place KM1 in safe foster homes that could address his needs;
- f. To contact the Florida Abuse Hotline upon obtaining knowledge that KM1 had engaged in child-on-child sexualized behavior so that such behavior could be appropriately investigated, assessed and treated;
- g. To provide the dependency court with complete and truthful information regarding KM1;

- h. To provide KM1 with Child Advocates who had knowledge of his history and behaviors so that they could make appropriate recommendations for behavioral, psychological, and psychosexual assessments;
  - i. To review and be aware of the facts contained within KM1's foster care records and Child Resource Record and to address any inappropriate behaviors of KM1 identified therein; and
  - j. To match KM1 with an adoptive family who could meet his needs.
- 108. Defendant, CHILDNET breached the above duties in the following ways:
  - a. CHILDNET was aware that KM1 was experiencing sexualized and other behaviors that were indicators that he may have been sexually abused, yet they never referred him for a psychosexual assessment or provided him with any specialized counseling to address those issues, nor did they seek a psychological evaluation of KM1;
  - b. CHILDNET was aware that KM1 disclosed that his foster brother in the Ebanks home had touched his private parts, yet CHILDNET failed to call in an abuse report to the Florida Abuse Hotline so that the matter could be properly investigated, and CHILDNET further failed to seek any specialized counseling for KM1, failed to obtain any psychological or psychosexual evaluations for KM1, and failed to implement a safety plan in TM and MM's home to protect KM1 and KM2 from child-on-child sexual abuse;
  - c. CHILDNET failed to place KM1 in a therapeutic foster home as had been recommended by this therapist;

- d. When KM1's foster mother in the Williams home put in a 30-Day Notice to have KM1 removed due to his negative behaviors and when CHILDNET had knowledge that KM1 was acting out in negative attention-seeking ways in the Williams home, they moved KM1 from a foster home where he was the only foster child to the Ebanks foster home where he would be placed with another foster child and would receive even less individualized attention from his foster parent;
- e. CHILDNET allowed KM1 to live in the Ebanks foster home sharing a bedroom with another child when CHILDNET was aware that KM1 had been exhibiting behavior indicative of sexual abuse;
- f. CHILDNET referred KM1 for behavioral analyst services but never followed through to ensure that KM1 received those services; and
- g. CHILDNET inappropriately matched KM1 with TM, MM, and KM2 as an adoptive family because CHILDNET was aware that KM1 had exhibited sexualized and other behaviors indicating that he had been sexually abused and needed a family that could provide him with specialized attention and that did not have another young child in the home who could place KM1 at risk of acting out sexually upon that child.

109. As a result and proximate cause of the above breaches, Plaintiff, KM1, suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment, and aggravation of a previously existing condition as he was a child who was placed in foster care as a result of neglect. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, KM1 demands judgment for damages against Defendant, CHILDNET, INC.

**COUNT II**  
**PLAINTIFF, KM2's NEGLIGENCE CLAIM AGAINST**  
**DEFENDANT, CHILDNET, INC.**

110. Plaintiff realleges paragraphs 1-105 as if fully set forth herein.

111. Defendant, CHILDNET, owed the following duties to Plaintiff, KM2 pursuant to Florida law:

- a. To act in a reasonably prudent manner in placing a child for adoption in TM and MM's home when it was foreseeable that any behaviors of such child could have an effect on KM2 and possibly place her at risk of harm;
- b. To not create a zone of risk that posed a threat of harm to KM2;
- c. To not act in a manner that posed a foreseeable risk of harm to KM2;
- d. To ensure that the risk of harm was lessened and that appropriate and necessary precautions were implemented in TM and MM's home to protect KM2, as it was foreseeable that KM1 would act out sexually with KM2; and
- e. To not create a situation that posed a risk of harm to KM2 by placing another child with behavioral issues and a history of sexualized behavior to live with KM2.

112. Defendant, CHILDNET breached the above duties in the following ways:

- a. CHILDNET was aware of KM1's history of behavioral issues, including violent behaviors, behaviors that were signs of sexual abuse, and prior child-on-child sexualized behavior, yet CHILDNET failed to obtain a

psychosexual assessment of KM1 or a psychological evaluation of KM1 and determined that TM and MM's home was an appropriate adoptive home for KM1 and by placing him there, even though it was foreseeable that KM1 would act out sexually upon KM2; and

- b. CHILDNET failed to ensure that a safety plan was implemented to protect KM2, upon placement of KM1 in TM and MM's home, when it was aware of the risk of harm to KM2 based on its knowledge of KM1's history of behavioral issues, including violent behaviors, behaviors that were signs of sexual abuse, and prior child-on-child sexualized behavior.

113. As a result and proximate cause of the above breaches, Plaintiff, KM2, experienced pain and suffering, mental anguish, loss of capacity for the enjoyment of life, and expense incurred for medical care and treatment. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, KM2 demands judgment for damages against Defendant, CHILDNET, INC.

**COUNT III**  
**PLAINTIFFS, TM AND MM'S WRONGFUL ADOPTION CLAIM BASED ON**  
**NEGLIGENT MISREPRESENTATION AND CONCEALMENT AGAINST**  
**DEFENDANT, CHILDNET, INC.**

114. Plaintiffs reallege paragraphs 1-105 as if fully set forth herein.

115. Defendant, CHILDNET, owed the following duties to Plaintiffs, TM and MM, pursuant to Florida law and its contractual obligations pursuant to its contract with DCF:

- a. To disclose all known information concerning KM1 and his behaviors to TM and MM as prospective adoptive parents prior to placing KM1 in their home and prior to finalizing the adoption of KM1 by TM and MM;



- b. To disclose to TM and MM, as prospective adoptive parents, all known sexualized behaviors of KM1 and the risk of harm that such behaviors could pose to KM2 prior to placing KM1 in their home and prior to finalizing the adoption of KM1 by TM and MM;
- c. To match TM and MM with an adoptive child who would not pose a risk of harm to their child, KM2;
- d. To obtain a psychosexual assessment of KM1, as CHILDNET was aware that KM1 had exhibited sexualized behaviors in foster care;
- e. To obtain a psychological assessment of KM1 when KM1 was known or suspected of having mental health problems, prior to placing KM1 in TM and MM's home and finalizing the adoption of KM1 by TM and MM;
- f. To implement a safety plan and necessary, appropriate precautions to protect KM2 from known behaviors of KM1 that posed a foreseeable risk of harm to KM2, upon placing KM1 in TM and MM's home and finalizing the adoption of KM1 by TM and MM;
- g. To address behavioral concerns regarding KM1 of which TM and MM made CHILDNET aware and to implement appropriate therapeutic assessments and services for KM1 to address such concerns; and
- h. To make appropriate professional recommendations regarding KM1's sexualized behaviors as opposed to misrepresenting that KM1's sexualized behaviors were normal for a foster child.

116. Defendant, CHILDNET breached the above duties in the following ways:



- a. CHILDNET was aware of the behaviors of KM1 and that they posed a foreseeable risk of harm to KM2 and inappropriately matched KM1 with TM and MM for adoption when Defendant knew that KM2 was another young child living in TM and MM's home;
- b. Although CHILDNET was aware that KM1 had many concerning behaviors during his time in foster care that were signs that he was sexually abused, CHILDNET failed to obtain a psychosexual evaluation of KM1 prior to placing KM1 in TM and MM's home and prior to finalizing the adoption of KM1 by TM and MM.;
- c. Although CHILDNET was aware that KM1 had many concerning behaviors during his time in foster care that were signs that he may have mental health problems, CHILDNET failed to obtain a psychological evaluation prior to placing KM1 in TM and MM's home and prior to finalizing the adoption of KM1 by TM and MM.;
- d. CHILDNET failed to disclose all known behaviors and all known history regarding KM1 to TM and MM prior to placing KM1 in their home and prior to finalizing the adoption of KM1 by TM and MM;
- e. CHILDNET was aware of the behaviors of KM1 and that they posed a foreseeable risk of harm to KM2, yet they placed KM1 in TM and MM's home and finalized the adoption of KM1 by TM and MM without implementing a safety plan to protect KM2;
- f. Upon TM and MM raising concerns regarding KM1's behaviors in their home and whether he was receiving appropriate therapeutic services to

address his behaviors, CHILDNET failed to obtain appropriate therapeutic services for KM1 and misleadingly misrepresented and reassured TM and MM that KM1's behavior was normal and they should not be worried about him; and

- g. Prior to their adoption of KM1, CHILDNET provided TM and MM with a misleading Child Study of KM1 that misrepresented his history of concerning behaviors by stating that he had no maladaptive behaviors, when, in fact, Defendant was well aware of many maladaptive behaviors exhibited by KM1 during his time in foster care.

117. Plaintiffs, TM and MM reasonably relied upon any and all statements and representations made by Defendant, CHILDNET, concerning KM1 prior to KM1 being placed in TM and MM's home and prior to the finalization of KM1's adoption by TM and MM.

118. As a result and proximate cause of the above breaches and misrepresentations, Plaintiffs, TM and MM's children, KM1 and KM2, have suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expenses incurred for medical care and treatment, and aggravation of any previously existing condition. The losses are either permanent or continuing and Plaintiffs will suffer the losses in the future. Plaintiffs, TM and MM, have incurred the expense of necessary treatment due to the injuries of KM1 and KM2 and will continue to incur expenses of necessary treatment for KM1 and KM2 either until they reach the age of majority or for the duration of their lifetime if KM1 and/or KM2 are disabled and unable to support themselves from gainful employment as adults as a result of the negligence of the Defendant. Further, as a result and proximate cause of the breaches and misrepresentations of Defendant, TM and MM have suffered mental anguish, loss of capacity for the enjoyment of life,

expense incurred for medical care and treatment. In addition, MM has suffered loss of earnings and the loss of ability to earn money. Such losses are either permanent or continuing and Plaintiffs, TM and MM will suffer the losses in the future.

WHEREFORE, Plaintiffs, TM and MM demand judgment for damages against Defendant, CHILDNET, INC.

**COUNT IV**  
**PLAINTIFFS, TM AND MM'S WRONGFUL ADOPTION CLAIM BASED ON**  
**FLORIDA STATUTE SECTION 63.085 AGAINST**  
**DEFENDANT, CHILDNET, INC.**

119. Plaintiffs reallege paragraphs 1-105 as if fully set forth herein.

120. Defendant, CHILDNET owed a statutory duty pursuant to section 63.085, Florida Statutes, to TM and MM, to provide TM and MM with all available information concerning KM1's background prior to finalizing the adoption of KM1 by TM and MM.

121. Defendant, CHILDNET breached the above statutory duty in the following ways:

- a. CHILDNET failed to disclose all known behaviors and all known history regarding KM1 to TM and MM prior to placing KM1 in their home and prior to finalizing the adoption of KM1 by TM and MM;
- b. Although CHILDNET was aware that KM1 had many concerning behaviors during his time in foster care that were signs that he may have been sexually abused, CHILDNET failed to obtain a psychosexual evaluation of KM1 prior to placing KM1 in TM and MM's home and prior to finalizing the adoption of KM1 by TM and MM.;
- c. Although CHILDNET was aware that KM1 had many concerning behaviors during his time in foster care that were signs that he may have mental health problems, CHILDNET failed to obtain a psychological

evaluation prior to placing KM1 in TM and MM's home and prior to finalizing the adoption of KM1 by TM and MM.;

- d. Upon TM and MM raising concerns regarding KM1's behaviors in their home and whether he was receiving appropriate therapeutic services to address his behaviors, CHILDNET failed to obtain appropriate therapeutic services for KM1 and misleadingly reassured TM and MM that KM1's behavior was normal and they should not be worried about him; and
- e. Prior to their adoption of KM1, CHILDNET provided TM and MM with a misleading Child Study of KM1 that misrepresented his history of concerning behaviors by stating that he had no maladaptive behaviors, when, in fact, CHILDNET was well aware of many maladaptive behaviors exhibited by KM1 during his time in foster care.

122. As a result and proximate cause of the above breaches, Plaintiffs, TM and MM's children, KM1 and KM2, have suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical and nursing care and treatment and aggravation of any previously existing condition. The losses are either permanent or continuing and Plaintiffs will suffer the losses in the future. Plaintiffs, TM and MM, have incurred the expense of necessary treatment due to the injuries of KM1 and KM2 and will continue to incur expenses of necessary treatment for KM1 and KM2 either until they reach the age of majority or for the duration of their lifetime if KM1 and/or KM2 are disabled and unable to support themselves from gainful employment as adults as a result of the negligence of the Defendant. Further, as a result and proximate cause of the breaches of Defendant, TM and MM have suffered mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment.

MM has additionally suffered from loss of earnings and loss of ability to earn money. Such losses are either permanent or continuing and Plaintiffs, TM and MM will suffer the losses in the future.

WHEREFORE, Plaintiffs, TM and MM demand judgment for damages against Defendant, CHILDNET, INC.

**COUNT V**  
**PLAINTIFFS KM1, KM2, TM, AND MM'S CULPABLE NEGLIGENCE CLAIMS**  
**AGAINST DEFENDANT, CHILDNET, INC.**

123. Plaintiffs reallege paragraphs 1- 105 as if fully set forth herein.

124. Defendant, CHILDNET owed the following statutory duties pursuant to section 409.993, Florida Statutes, to Plaintiffs, KM1, KM2, TM, and MM:

- a. To not act in a culpably negligent manner while performing foster care and related services and adoption services to the Plaintiffs;
- b. To not act with reckless indifference of human life while performing foster care and related services and adoption services to the Plaintiffs; and
- c. To not act with grossly careless disregard of human life while performing foster care and related services and adoption services to the Plaintiffs.

125. Defendant, CHILDNET breached the above statutory duties and acted in a culpably negligent manner, with reckless indifference or grossly careless disregard for human life, in the following ways:

- a. Despite having repeated knowledge that KM1 had engaged in behavior consistent with child-on-child sexual activity with his foster brother in the Ebanks foster home, CHILDNET failed:
  - i. To call the Florida Abuse Hotline so that an investigation could be initiated, as required pursuant to Florida law;

- ii. To implement any sort of safety plan in TM and MM's home to protect KM2 and prevent KM1 and KM2 from engaging in child-on-child sexual activity;
  - iii. To refer KM1 to any sort of psychological evaluation or psychosexual evaluation to understand his needs; and
  - iv. To refer KM1 to any sort of counseling that was specialized to deal with suspected sexual abuse of KM1;
- b. CHILDNET recklessly and knowingly misrepresented material facts to TM and MM that KM1's sexualized behaviors were normal for a foster child;
- c. After the CEO of CHILDNET, Emilio Benitez, was informed by TM and MM of KM1's inappropriate behavior with his foster brother, he did nothing to ensure that his staff followed proper protocol, including contacting the Florida Abuse Hotline, implementing appropriate safety plans, obtaining therapeutic services, or obtaining psychological or psychosexual evaluations, and instead represented to TM and MM that he was not concerned with KM1's behaviors when he was aware that KM1 would be residing with TM and MM's young daughter, KM2, thereby placing KM1 and KM2 at risk of harm;
- d. CHILDNET's upper management allowed for internal procedures of transferring KM1's case, and the cases of other dependent children, to different units within CHILDNET whenever the case plan goal changed, thereby assigning a brand-new Child Advocate to the case anytime the goal changed, which placed such children at risk of harm as it failed to ensure



that dependent children, such as KM1, had a Child Advocate who was knowledgeable of his behaviors and history;

- e. CHILDNET's upper management's allowance of the internal procedure to transfer the cases of dependent children to different units whenever the case plan goal changed also put prospective adoptive parents and their families, such as TM, MM, and KM2, at risk of harm because without an Adoption Advocate having full knowledge of a prospective adoptive child's history and behaviors, such child cannot be appropriately and safely matched with an adoptive family;
- f. CHILDNET's upper management implemented a practice where its Child Advocates carried caseloads that were reckless, dangerous, and double the national standard for child welfare, thereby requiring Child Advocates to do double the work in half the time required to do the work, thereby placing the children on their caseloads, such as KM1, at risk of harm;
- g. CHILDNET's upper management's allowance of the practice of its Child Advocates to carry caseloads that were reckless, dangerous, and double the national standard for child welfare also placed prospective adoptive parents and their families, such as TM, MM, and KM2, at risk of harm as the workload did not allow CHILDNET Adoption Advocates to be able to obtain full knowledge of the adoptive child or the prospective adoptive families to be able to make appropriate, safe matches and to be able to fully disclose all available information about the adoptive child to the prospective adoptive family.



126. As a result and proximate cause of the above breaches, Plaintiffs, TM and MM's children, KM1 and KM2, have suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expenses incurred for medical and nursing care and treatment and aggravation of any previously existing condition. The losses are either permanent or continuing and Plaintiffs will suffer the losses in the future. Plaintiffs, TM and MM, have incurred the expense of necessary treatment due to the injuries of KM1 and KM2 and will continue to incur expenses of necessary treatment for KM1 and KM2 either until they reach the age of majority or for the duration of their lifetime if KM1 and/or KM2 are disabled and unable to support themselves from gainful employment as adults as a result of the negligence of the Defendant. Further, as a result and proximate cause of the breaches of Defendant, TM and MM have suffered mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment. MM has experienced loss of earnings and loss of ability to earn money. Such losses are either permanent or continuing and Plaintiffs, TM and MM will suffer the losses in the future.

WHEREFORE, Plaintiffs, KM1, KM2, TM, and MM demand judgment for damages against Defendant, CHILDNET, INC.

**COUNT VI**  
**PLAINTIFF, KM1'S NEGLIGENCE CLAIM AGAINST**  
**DEFENDANT, NATIONAL YOUTH ADVOCATE PROGRAM, INC.**

127. Plaintiff realleges paragraphs 1-105 as if fully set forth herein.

128. Defendant, NYAP, owed the following duties to Plaintiff, KM1 pursuant to Florida law and its contractual obligations pursuant to its contract with DCF:

- a. To ensure KM1's safety, well-being, and permanency;
- b. To protect KM1 from sexual abuse;
- c. To protect KM1 from physical abuse;

- d. To provide necessary therapeutic services to KM1; and
- e. To contact the Florida Abuse Hotline upon obtaining knowledge that KM1 had engaged in child-on-child sexualized behavior so that such behavior could be appropriately investigated.

129. Defendant, NYAP breached the above duties in the following ways:

- a. NYAP was aware that KM1 was experiencing behaviors that were indicators that he may have been sexually abused, yet NYAP failed to recommend that KM1 have any specialized counseling to address those issues, and NYAP failed to recommend a psychological or psychosexual evaluation of KM1;
- b. NYAP was aware that KM1 disclosed that his foster brother in the Ebanks home had touched his private parts, yet NYAP did not call in an abuse report to the Florida Abuse Hotline so that the matter could be properly investigated, and NYAP further failed to recommend that KM1 receive any specialized counseling, that KM1 needed to have a psychological or psychosexual evaluation, or that a safety plan should be implemented in TM and MM's home to protect KM1 and KM2 from child-on-child sexual activity; and
- c. NYAP failed to recommend that KM1 needed to be placed in a therapeutic foster home, as had been recommended by his previous therapist.

130. As a result and proximate cause of the above breaches, Plaintiff, KM1, suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment, and aggravation of a previously existing

condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, KM1 demands judgment for damages against Defendant, NATIONAL YOUTH ADVOCATE PROGRAM, INC.

**COUNT VII**  
**PLAINTIFF, KM2'S NEGLIGENCE CLAIM AGAINST**  
**DEFENDANT, NATIONAL YOUTH ADVOCATE PROGRAM, INC.**

131. Plaintiff realleges paragraphs 1-105 as if fully set forth herein.

132. Defendant, NYAP, owed the following duties to Plaintiff, KM2 pursuant to Florida law:

- a. To act in a reasonably prudent manner in providing therapeutic services to KM1 and in participating in adoption disclosure meetings with TM and MM when it was foreseeable that any behaviors of KM1 could have an effect on KM2 and possibly place her at risk of harm;
- b. To not create a zone of risk that posed a threat of harm to KM2;
- c. To not act in a manner that posed a foreseeable risk of harm to KM2;
- d. To ensure that the risk of harm was lessened and that appropriate and necessary precautions were implemented in TM and MM's home to protect KM2, as it was foreseeable that KM1 would act out sexually with KM2; and
- e. To not create a situation that posed a risk of harm to KM2 by failing to disclose KM1's behavioral issues and history of sexualized behavior to TM and MM when NYAP was aware that TM and MM wanted to adopt KM1 and that KM1 would be living with KM2.

133. Defendant, NYAP breached the above duties in the following ways:

- a. NYAP was aware of KM1's history of behavioral issues, including violent behaviors, behaviors that were signs of sexual abuse, and prior child-on-child sexualized behavior, yet NYAP participated in adoption disclosure meetings with TM and MM and failed to disclose such issues to them when it was foreseeable that TM and MM would adopt KM1 and that by living together, KM1 could act out sexually upon KM2;
- b. Although NYAP was aware of KM1's history of sexualized behaviors, NYAP never recommended that he have a psychological or psychosexual evaluation or that KM1 needed a safety plan or therapeutic services that were specialized to address sexual abuse of KM1, when it knew KM1 would be living with KM2 and his behaviors could place her at risk of harm; and
- c. Upon TM and MM making NYAP aware of KM1's inappropriate behaviors in their home, NYAP reassured TM and MM that such behaviors were normal and they had nothing to worry about, when it was foreseeable that TM and MM would reasonably rely upon such reassurances and would adopt KM1 and that by living together, and it was foreseeable that KM1 could act out sexually upon KM2.

134. As a result and proximate cause of the above breaches, Plaintiff, KM2, suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, KM2 demands judgment for damages against Defendant, NATIONAL YOUTH ADVOCATE PROGRAM, INC.

**COUNT VIII**  
**PLAINTIFFS, TM AND MM'S WRONGFUL ADOPTION CLAIM BASED ON**  
**NEGLIGENT MISREPRESENTATION AND CONCEALMENT AGAINST**  
**DEFENDANT, NATIONAL YOUTH ADVOCATE PROGRAM, INC.**

135. Plaintiffs reallege paragraphs 1-105 as if fully set forth herein.

136. Defendant, NYAP, owed the following duties to Plaintiffs, TM and MM, pursuant to Florida law:

- a. To disclose all known information concerning KM1 and his behaviors to TM and MM as prospective adoptive parents prior to the placement of KM1 in their home and prior to the finalization of the adoption of KM1 by TM and MM, as NYAP undertook to take part in disclosure meetings regarding TM and MM's adoption of KM1;
- b. To disclose to TM and MM, as prospective adoptive parents, all known sexualized behaviors of KM1 and the risk of harm that such behaviors could pose to KM2 prior to placement of KM1 in their home and prior to the finalization of the adoption of KM1 by TM and MM, as NYAP undertook to take part in disclosure meetings regarding TM and MM's adoption of KM1;
- c. To recommend a psychosexual assessment of KM1, as NYAP was aware that KM1 had exhibited sexualized behaviors in foster care;
- d. To recommend a psychological assessment of KM1, as NYAP was aware that KM1 had exhibited behaviors in foster care showing that he may have mental health problems;

- e. To recommend a safety plan and necessary, appropriate precautions to protect KM2 from known behaviors of KM1 that posed a foreseeable risk of harm to KM2, upon placement of KM1 in TM and MM's home and prior to the finalization of the adoption of KM1 by TM and MM;
- f. To address behavioral concerns regarding KM1 of which TM and MM made NYAP aware and to implement appropriate therapeutic services for KM1 to address such concerns; and
- g. To make appropriate professional recommendations regarding KM1's sexualized behaviors as opposed to misrepresenting that KM1's sexualized behaviors were normal for a foster child.

137. Defendant, NYAP breached the above duties in the following ways:

- a. NYAP undertook to participate in disclosure meetings concerning the adoption of KM1 by TM and MM and although NYAP was aware that KM1 had behaviors that posed a foreseeable risk of harm to KM2, NYAP failed to disclose all known behaviors and all known history regarding KM1 to TM and MM prior to the finalization of the adoption of KM1 by TM and MM;
- b. NYAP failed to recommend that KM1 needed a psychosexual assessment and instead assured TM and MM that KM1's sexualized behaviors were normal for a foster child;
- c. NYAP failed to recommend that KM1 needed a psychological assessment to address his known inappropriate and negative attention-seeking behaviors in foster care; and



- d. Upon TM and MM raising concerns to NYAP regarding KM1's behaviors in their home and whether he was receiving appropriate therapeutic services to address his behaviors, NYAP failed to recommend appropriate therapeutic services for KM1 and misleadingly misrepresented and reassured TM and MM that KM1's behavior was normal and they should not be worried about him.

138. Plaintiffs, TM and MM reasonably relied upon any and all statements and representations made by Defendant, NYAP, concerning KM1 prior to KM1 being placed in TM and MM's home and prior to the finalization of TM and MM's adoption of K.M.

139. As a result and proximate cause of the above breaches and misrepresentations, Plaintiffs, TM and MM's children, KM1 and KM2, have suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical and nursing care and treatment, and aggravation of any previously existing condition. The losses are either permanent or continuing and Plaintiffs will suffer the losses in the future. Plaintiffs, TM and MM, have incurred the expense of necessary treatment due to the injuries of KM1 and KM2 and will continue to incur expenses of necessary treatment for KM1 and KM2 either until they reach the age of majority or for the duration of their lifetime if KM1 and/or KM2 are disabled and unable to support themselves from gainful employment as adults as a result of the negligence of the Defendant. Further, as a result and proximate cause of the breaches and misrepresentations of Defendant, TM and MM have suffered mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment. In addition, MM has experienced loss of ability to earn money. Such losses are either permanent or continuing and Plaintiffs, TM and MM will suffer the losses in the future.

WHEREFORE, Plaintiffs, TM and MM demand judgment for damages against Defendant, NATIONAL YOUTH ADVOCATE PROGRAM, INC.

**COUNT IX**  
**PLAINTIFFS KM1, KM2, TM, AND MM'S CULPABLE NEGLIGENCE CLAIMS**  
**AGAINST DEFENDANT, NATIONAL YOUTH ADVOCATE PROGRAM, INC.**

140. Plaintiffs reallege paragraphs 1-105, 123-139 as if fully set forth herein.

141. Defendant, NYAP owed the following statutory duties pursuant to section 409.993, Florida Statutes, to Plaintiffs, KM1, KM2, TM, and MM:

- a. To not act in a culpably negligent manner while performing foster care and related services and therapeutic services to the Plaintiffs;
- b. To not act with reckless indifference of human life while performing foster care and related services and therapeutic services to the Plaintiffs; and
- c. To not act with grossly careless disregard of human life while performing foster care and related services and therapeutic services to the Plaintiffs.

142. Defendant, NYAP breached the above statutory duties and acted in a culpably negligent manner, with reckless indifference or grossly careless disregard for human life, in the following ways:

- a. Despite having knowledge that KM1 had engaged in repeated behaviors consistent with child-on-child sexual activity with his foster brother in the Ebanks foster home, NYAP failed:
  - i. To call the Florida Abuse Hotline so that an investigation could be initiated, as required pursuant to Florida law;

- ii. To recommend any sort of safety plan in TM and MM's home to protect KM2 and prevent KM1 and KM2 from engaging in child-on-child sexual activity;
  - iii. To recommend that KM1 have a psychological evaluation or psychosexual evaluation to understand his needs; and
  - iv. To recommend that KM1 receive counseling services that were specialized to deal with suspected sexual abuse of KM1;
- b. NYAP recklessly and knowingly misrepresented material facts to TM and MM that KM1's sexualized behaviors were normal for a foster child and covered their knowledge of his sexual abuse.

143. As a result and proximate cause of the above breaches, Plaintiffs, TM and MM's children, KM1 and KM2, have suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical and nursing care and treatment, and aggravation of any previously existing condition. The losses are either permanent or continuing and Plaintiffs will suffer the losses in the future. Plaintiffs, TM and MM, have incurred the expense of necessary treatment due to the injuries of KM1 and KM2 and will continue to incur expenses of necessary treatment for KM1 and KM2 either until they reach the age of majority or for the duration of their lifetime if KM1 and/or KM2 are disabled and unable to support themselves from gainful employment as adults as a result of the negligence of the Defendant. Further, as a result and proximate cause of the breaches of Defendant, TM and MM have suffered mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment. In addition, MM experienced loss of earnings and loss of ability to earn money. Such

losses are either permanent or continuing and Plaintiffs, TM and MM will suffer the losses in the future.

WHEREFORE, Plaintiffs, KM1, KM2, TM, and MM demand judgment for damages against Defendant, NATIONAL YOUTH ADVOCATE PROGRAM, INC.

**COUNT X**  
**PLAINTIFF, KM1'S NEGLIGENCE CLAIM AGAINST**  
**DEFENDANT, KIDS IN DISTRESS, INC.**

144. Plaintiff realleges paragraphs 1-105 as if fully set forth herein.

145. At all times material hereto, KIDS repeatedly ignored risks and concerns for KM1's health and welfare raised by the foster parents in both NYAP homes and by the Adoptive Parents.

146. Specifically, KIDS ignored clear signs that KM1 was sexually abused and completely failed to provide the necessary therapeutic services or request the proper assessments i.e psychosexual assessment, to determine the level of therapy KM1 needed to ensure that KM1 was safe from further sexual abuse.

147. Defendant, KIDS, and its agents and/or employees, owed the following common law, statutory, and contractual duties to Plaintiff, KM1:

- a. To listen to history provided by TM and MM and to obtain all history pertaining to KM1 upon receiving a referral for services;
- b. To listen to history provided by TM and MM and to obtain all information from NYAP pertaining to KM1's history to ensure that KM1 received all the necessary support to ensure his safety, health, and stability;
- c. To provide therapeutic support for KM1 while in foster care, especially in times when there is a transition/change in placement;

- d. Upon providing adoptive services, obtain all the history which was readily available to them when they previously provided therapeutic care to KM1, while in foster care;
- e. To review all of KM1's history to determine what assessments should be made to provide adequate therapeutic care and support to KM1 while in foster care and during the transition into his adoptive home;
- f. To review and be aware of the facts contained within KM1's foster care records and Child Resource Record and to address any inappropriate behaviors of KM1 identified therein;
- g. To contact the Florida Abuse Hotline upon obtaining knowledge that KM1 had engaged in child-on-child sexualized behavior so that such behavior could be appropriately investigated, assessed and treated;
- h. To ensure that when its employees had a reasonable suspicion that child-on-child sexual abuse incident occurs, to call the abuse hotline, immediately implement a safety plan, and provide the appropriate services and evaluations to provide adequate treatment for the child;
- i. To recommend that safety plans be in place and to refer KM1 for assessments that met KM1's needs;
- j. To ensure the safety and well-being of KM1;

148. Defendant, KIDS, breached the above duties in the following ways:

- a. KIDS failed to obtain the necessary background information prior to providing therapeutic services in that they failed to:

- i. Take note of the concerns that TM and MM consistently reported pertaining to KM1's behaviors;
  - ii. Review KM1's therapy file from when KIDS provided services in the Williams foster home;
  - iii. Review information readily available to NYAP, the agency who referred KM to KIDS for services;
  - iv. Review and be aware of the facts contained within KM1's foster care file and Child Resource record and to address any inappropriate behaviors of KM1 therein;
- b. KIDS was aware that KM1 was experiencing sexualized and other behaviors that were indicators that he may have been sexually abused, yet they never referred him for a psychosexual assessment or provided him with any specialized counseling to address those issues, nor did they seek a psychological evaluation of KM1;
- c. Despite having knowledge that KM1 had engaged in behavior consistent with child-on-child sexual activity:
  - i. KIDS failed to call the Florida Abuse Hotline so that an investigation could be initiated, as required pursuant to Florida law;
  - ii. KIDS failed to recommend any sort of safety plan for KM1;
  - iii. KIDS failed to recommend that KM1 receive counseling services that were specialized to deal with suspected sexual abuse of KM1;



- d. KIDS failed to call the abuse hotline upon obtaining knowledge that KM1 had engaged in child-on-child sexualized behavior so that such behavior could be appropriately investigated, assessed, and treated.

149. As a result and proximate cause of the above breaches, Plaintiff, KM1, suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment, and aggravation of any previously existing condition as he was a child who was placed in foster care as a result of neglect. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, KM1 demands judgment for damages against Defendant, KIDS IN DISTRESS, INC.

**COUNT XI**  
**PLAINTIFF, KM2'S NEGLIGENCE CLAIM AGAINST**  
**DEFENDANT, KIDS IN DISTRESS, INC.**

150. Plaintiff realleges paragraphs 1-105 as if fully set forth herein.

151. At all times material hereto, KIDS repeatedly ignored risks and concerns for KM1's health and welfare raised by the foster parents in the NYAP foster home and by the Adoptive Parents.

152. Specifically, KIDS ignored clear signs that KM1 was sexually abused and completely failed to provide the necessary therapeutic services or request the proper assessments i.e. psychosexual assessment, to determine the level of therapy KM1 needed and to ensure that a safety plan was in place to prevent child-on-child sexual incidents between KM1 and KM2.

153. Defendant, KIDS, and its agents and/or employees, owed the following common law, statutory, and contractual duties to Plaintiff, KM2:

- a. To contact the Florida Abuse Hotline upon obtaining knowledge that KM1 had engaged in child-on-child sexualized behavior so that such behavior could be appropriately investigated, assessed and treated to prevent any incidents that may harm KM2;
- b. To listen to history provided by TM and MM and obtain all history pertaining to KM1, some of which was readily available to them when they previously provided therapeutic care to KM1 while in foster care;
- c. To review all of KM1's history to determine what assessments should be made to provide adequate therapeutic care and support to the adoptive sibling and family;
- d. To review and be aware of the facts contained within KM1's foster care records and Child Resource Record and to address all inappropriate behaviors of KM1;
- e. To obtain all information from NYAP pertaining to KM1's history to ensure that the adoptive family received all the necessary support to ensure the safety of KM2;
- f. To provide therapeutic services in the adoptive home to ensure that all family members were aware of how to protect KM2 from being a victim of sexual abuse;
- g. To act in a reasonably prudent manner in providing therapeutic services to KM1 when it was foreseeable that any behaviors of KM1 could have an effect on KM2 and possibly place her at risk of harm;
- h. To not create a zone of risk that posed a threat of harm to KM2;

- i. To not act in a manner that posed a foreseeable risk of harm to KM2;
- j. To ensure that the risk of harm was lessened and that appropriate and necessary precautions were implemented in TM and MM's home to protect KM2, as it was foreseeable that KM1 would act out sexually with KM2; and
- k. To not create a situation that posed a risk of harm to KM2 by failing to disclose KM1's behavioral issues and history of sexualized behavior to TM and MM when KIDS was aware that TM and MM wanted to adopt KM1 and that KM1 would be living with KM2.

154. Defendant, KIDS, breached the above duties in the following ways:

- a. Despite KIDS' knowledge of KM1's therapeutic history and KM1's risk to KM2, KIDS failed to recommend that CHILDNET provide TM, MM, and KM2 with a safety plan to ensure that KM2 would not be a victim of a child-on-child sexual incident;
- b. KIDS failed to ever call the abuse hotline when KM1 was exhibiting concerning sexual behaviors such that an investigation could have been initiated providing KM1 with the appropriate assessments and therapeutic interventions and safety plans necessary to protect KM2.
- c. KIDS was aware that KM1 had exhibited sexualized and other behaviors indicating that he had been sexually abused and needed a family that could provide him with specialized attention and that did not have another young child in the home who could place KM1 at risk of acting out sexually upon

that child, but failed to ever warn TM and MM such that they may protect KM2.

- d. KIDS was aware of KM1's history of behavioral issues, including violent behaviors, behaviors that were signs of sexual abuse, and prior child-on-child sexualized behavior, yet KIDS failed to refer KM1 for a psychosexual or a psychological evaluation, and determined that TM and MM's home was an appropriate adoptive home for KM1 even though it was foreseeable that KM1 would act out sexually on KM2.

155. As a result and proximate cause of the above breaches, Plaintiff, KM2, suffered injury resulting in pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment, and aggravation of any previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, KM2 demands judgment for damages against Defendant, KIDS IN DISTRESS, INC.

**COUNT XIII**  
**PLAINTIFFS KM1, KM2, TM, AND MM'S INTENTIONAL BREACH OF FIDUCIARY DUTY AGAINST DEFENDANT, KIDS IN DISTRESS, INC.**

1. Plaintiffs reallege paragraphs 1-105, 144-155 as if fully set forth herein.
2. KIDS accepted responsibility to provide the Plaintiffs with mental health and therapeutic services and to provide therapy to KM1 and Adoption Related Services to all the Plaintiffs.
3. A therapist-patient relationship was, accordingly, created between KIDS and the Plaintiffs.

4. Pursuant to its statutory and contractual obligations to the Plaintiffs and the therapist-patient relationship that had been created, there existed a relationship of trust and confidence between KIDS and the parties whereby KIDS owed the plaintiffs a fiduciary duty to the plaintiffs to act with good faith and honesty towards the Plaintiffs.

5. KIDS breached its fiduciary duty to KM1, KM2, MM, and TM.

6. KIDS should have known that its conduct, specifically, its complete failure to refer KM1 for a psychosexual evaluation, its failure to provide adequate therapeutic treatment, its failure to recommend that CHILDNET provide a safety plan, and its failure to advise TM and MM of KM1's extensive history, which resulted in a child-on-child incident in the home and the destabilization of the adoptive placement was substantially certain to result in injury to the parties.

7. As a direct and proximate result of KIDS' breach of its fiduciary duty, KM1 and KM2 were physically harmed, suffered harm resulting in pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expenses of psychological and therapeutic treatment. MM experiences a loss of earnings and loss of ability to earn money. The losses are either permanent or continuing and the plaintiffs will suffer such losses in the future.

WHEREFORE. Plaintiffs KM1, KM2, TM, and MM demand judgment against Defendant KIDS IN DISTRESS, INC., for damages in excess of caps found in Fla. Stat. sec. 409.1671, costs, and such other and further relief as this Court deems just and proper.

#### **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all issues so triable. Dated this 31st day of January, 2019.

**TALENFELD LAW**  
1776 N. Pine Island Road, Ste. 222  
Fort Lauderdale, Florida 33322  
Telephone: (754)888-KIDS

Facsimile: (954)644-4848  
[Howard@justiceforkids.us](mailto:Howard@justiceforkids.us)  
[Maha@justiceforkids.us](mailto:Maha@justiceforkids.us)  
[Brianna@justiceforkids.us](mailto:Brianna@justiceforkids.us)

/s/ Howard M. Talenfeld  
**Howard M. Talenfeld, Esq.**  
Florida Bar No.: 312398  
*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that on this 31st day of January, 2019, a true and correct copy of the above and foregoing was served via the E-Portal on:

<b>MARLOW ADLER ABRAMS NEWMAN &amp; LEWIS</b> 4000 Ponce de Leon Blvd., Suite 570 Coral Gables, FL 33146 Telephone: (305) 446-0500 Facsimile: (305) 446-3667 MARITZA PENA, Esquire Florida Bar No.: 145637 RENEE GOMEZ, Esquire Florida Bar No.: 35544 <a href="mailto:mpena@marlowadler.com">mpena@marlowadler.com</a> <i>Counsel for ChildNet, Inc.</i>	<b>WICKER SMITH O'HARA MCCOY &amp; FORD, P.A.</b> 515 E. Las Olas Boulevard Telephone: (954) 847-4800 Facsimile: (954) 760-9353 JASON A. GLUSMAN, Esquire Florida Bar No.: 0419400 CARLOS A. GARCIA, Esquire Florida Bar No.: 99768 <a href="mailto:ftlertpleadings@wickersmith.com">ftlertpleadings@wickersmith.com</a> <i>Counsel for National Youth Advocate Program, Inc.</i>
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**TALENFELD LAW**  
*Counsel for Plaintiffs*  
1776 N. Pine Island Road., Ste. 222  
Fort Lauderdale, Florida 33322  
Telephone: (754)888-KIDS  
Facsimile: (954)644-4848

By: /s/ Howard M. Talenfeld  
**Howard M. Talenfeld, Esq.**  
Florida Bar No.: 312398  
**Maha A. ELKolalli, Esq.**  
Florida Bar No.: 83815  
[Howard@justiceforkids.us](mailto:Howard@justiceforkids.us)  
[Maha@justiceforkids.us](mailto:Maha@justiceforkids.us)  
[Brianna@justiceforkids.us](mailto:Brianna@justiceforkids.us)